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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YESENIA PENA, individually and as
Successor in Interest to JESUS
FLORES, deceased; AMBER
TORRES, individually

Plaintiffs,

vs.

CITY OF AZUSA, a municipal entity,
JOSEPH STEWART, ALEJANDRO
GOMEZ and DOES 1 through 8,
inclusive,

Defendant

CASE NO.: 2:22-cv-07458-SB-MRW

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- 1. Violations of Civil Rights ([42 U.S.C. § 1983](#)) (Based on Unreasonable Use of Deadly Force)**
- 2. Violations of Civil Rights ([42 U.S.C. § 1983](#)) (Based on Unconstitutional Policy, Practice, or Custom)**
- 3. Violations of Civil Rights [[42 U.S.C. § 1983](#)] (Substantive Due Process)**
- 4. Violations of Civil Rights ([Cal. Civ. Code §52.1](#))**
- 5. Wrongful Death (Based on Battery)**
- 6. Wrongful Death (Based on Negligence)**
- 7. Battery ([Cal. Gov't. Code §§815.2\(a\); 820\(a\)](#)]**
- 8. Negligence ([Cal. Gov't. Code §§815.2\(a\); 820\(a\)](#)]**

DEMAND FOR JURY TRIAL

1 **JURISDICTION AND VENUE**

2 1. Jurisdiction is vested in this court under 28 U.S.C. § 1343(a)(3)-(4) for
3 violations of the 1871 Civil Rights Enforcement Act, as amended, including 42
4 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 1367(a).

5 2. Venue is proper in the Central District of California under 28 U.S.C.
6 § 1391(a)-(b)

7 **PARTIES**

8 3. Plaintiff YESENIA PENA is, and at all relevant times mentioned
9 herein was, a resident of the County of Los Angeles and State of California. Plaintiff
10 YESENIA PENA is the surviving mother of decedent JESUS FLORES.

11 4. Plaintiff YESENIA PENA is a Successor in Interest to decedent
12 JESUS FLORES., and is entitled to bring certain causes of action herein alleged
13 pursuant to § 377.30 of the California Code of Civil Procedure. (Attached herein is a
14 declaration designating Plaintiff YESENIA PENA as a Successor in Interest to
15 decedent YESENIA PENA, furnished herewith pursuant to § 377.32 of the
16 California Code of Civil Procedure, and a true and correct copy of the death
17 certificate for decedent JESUS FLORES., furnished herewith pursuant to § 377.32
18 of the California Code of Civil Procedure.)

19 5. Plaintiff AMBER TORRES, is and at all relevant times mentioned
20 herein was, a resident of the County of Los Angeles and State of California. Plaintiff
21 AMBER TORRES was subjected to unreasonable and excessive force, and is
22 entitled to bring certain causes of action herein alleged.

23 6. Defendant CITY OF AZUSA (hereinafter "CITY") is, and at all
24 relevant times mentioned herein was, a municipal entity or political subdivision of
25 the United States, organized and existing under the laws of the State of California.

26 7. Plaintiff is informed, believes, and thereon alleges that Defendant
27 Officers JOSEPH STEWART and ALEJANDRO GOMEZ (hereinafter
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1 "DEFENDANT OFFICERS"), are, and at all relevant times mentioned herein
2 were, residents of the County of Orange and State of California. Plaintiff is further
3 informed and believes, and thereon alleges, that at all times relevant to the acts and
4 omissions herein alleged, DEFENDANT OFFICERS were police officers
5 employed by the Defendant CITY and the Fullerton Police Department, and were
6 acting under color of state law and in the course and scope of their employment
7 with the Defendant CITY and the Fullerton Police Department.

8 8. On or around March 28, 2021, and April 20, 202, timely Claims for
9 damages were submitted to the City of Azusa, in substantial compliance with
10 California Government Code § 910, et seq. As of the filing of this Complaint,
11 plaintiffs have satisfactorily complied with the administrative requirements
12 prescribed by Government Code § 910, et seq.

13 9. Plaintiffs are unaware of the true names and capacities of those
14 Defendants named herein as DOE Defendants. Plaintiffs will amend this Complaint
15 to allege said Defendants' true names and capacities when that information becomes
16 known to them. Plaintiffs are informed, believe, and thereon alleges that these DOE
17 Defendants are legally responsible and liable for the incident, injuries, and damages
18 hereinafter set forth, and that each of said Defendants proximately caused the
19 injuries and damages by reason of negligent, careless, deliberately indifferent,
20 intentional, willful, or wanton misconduct, including the negligent, careless,
21 deliberately indifferent, intentional, willful, or wanton misconduct in creating and
22 otherwise causing the incidents, conditions, and circumstances hereinafter set forth,
23 or by reason of direct or imputed negligence or vicarious fault or breach of duty
24 arising out of the matters herein alleged.

25 10. Plaintiffs will seek leave to amend this Complaint to set forth said true
26 name(s) and identities of the unknown named DOE Defendants when they are
27 ascertained.
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1 11. Each of the individual Defendants sued herein is sued both in his
2 individual and personal capacity, as well as in his official capacity.

3 12. Plaintiffs are informed, believes, and thereon alleges that at all times
4 herein mentioned, each of the Defendants was the agent and/or employee and/or co-
5 conspirator of each of the remaining Defendants, and in doing the things hereinafter
6 alleged, was acting within the scope of such agency, employment, and/or conspiracy
7 and with the permission and consent of other co-Defendants.

8 **FACTS COMMON TO ALL COUNTS**

9 13. This claim arises out of a fatal officer-involved shooting which
10 occurred on October 22, 2021, at approximately 5:00 p.m., at or around 229 S.
11 Azusa Ave. in Azusa, California. Plaintiff AMBER TORRES was in the
12 passenger's seat of a vehicle driven by decedent, JESUS FLORES, when
13 DEFENDANT OFFICERS, while acting under color of state law and within the
14 course and scope of their employment with Defendant CITY and the City of Azusa
15 Police Department, negligently assessed the circumstances that were presented to
16 them, and then violently confronted Plaintiff AMBER TORRES, and Plaintiff
17 YESENIA PENA'S decedent, JESUS FLORES, without having reason to believe
18 that decedent JESUS FLORES, and Plaintiff AMBER TORRES, had committed a
19 crime, or would commit a crime in the future.

20 14. Without warning, the DEFENDANT OFFICERS proceeded to assault
21 and batter decedent, JESUS FLORES and Plaintiff AMBER TORRES, by
22 subjecting them to unreasonable and excessive use of force by repeatedly and
23 unjustifiably shooting their department issued firearms at the vehicle, causing a state
24 created danger, causing fatal injuries to the driver, decedent, JESUS FLORES, and
25 causing the vehicle to plunge into a canal. As a result of the respondent officers'
26 unlawful conduct, Plaintiff AMBER TORRES sustained severe injuries to her body,
27 including her neck, back, and mind, and JESUS FLORES was inflicted with a
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1 gunshot wound to his person. Following the shooting, the involved officers denied
2 medical care to Plaintiff AMBER TORRES, and decedent, JESUS TORRES in a
3 manner that demonstrated deliberate indifference to their constitutional rights. On
4 November 23, 2021, JESUS FLORES, died as a direct and proximate result of the
5 gunshot wound that was inflicted upon his person by the respondent officers.

6 15. At no time during the course of these events did JESUS FLORES, or
7 AMBER TORRES pose any reasonable or credible threat of death or serious bodily
8 injury to the DEFENDANT OFFICERS, nor did they do anything to justify the
9 force that was used against them, and the same was deadly, excessive, unnecessary,
10 and unlawful. Both prior to and during the time in which he was fatally shot, JESUS
11 FLORES posed no reasonable or credible threat of death or serious bodily injury to
12 DEFENDANT OFFICERS, nor to any other individual.

13 16. Both prior to and during the time in which he was shot dead, decedent,
14 JESUS FLORES and Plaintiff AMBER TORRES made no aggressive movements,
15 furtive gestures, or physical movements which would suggest to a reasonable police
16 officer that they had the will, or the ability, to inflict substantial bodily harm upon
17 any individual.

18 17. Both prior to and during the time in which the DEFENDANT
19 OFFICERS shot and killed JESUS FLORES, the DEFENDANT OFFICERS, who
20 fired, were not faced with any circumstances which would have led a reasonable
21 police officer to believe that decedent JESUS FLORES, and Plaintiff AMBER
22 TORRES, posed an immediate threat of death or serious bodily injury to any person.

23 18. After surviving for a significant and appreciable period of time
24 following the shooting, JESUS FLORES died as a direct and proximate result of the
25 gunshot wounds negligently inflicted upon his person by DEFENDANT
26 OFFICERS.

FOR THE FIRST CAUSE OF ACTION

By Plaintiffs Amber Torres, and Yesenia Pena, as Successor in Interest to JESUS FLORES, Against Joseph Stewart andf Alejandro Gomez

for Violations of Civil Rights

[42 U.S.C. § 1983]

(Based on Unreasonable Use of Deadly Force)

19. Plaintiffs restate and incorporate by reference the foregoing paragraphs of this Complaint as if set forth in full at this point.

20. This cause of action is brought on behalf of Plaintiff AMBER TORRES, and decedent JESUS FLORES, by and through his Successor in Interest, Plaintiff YESENIA PENA, who would, but for his death, be entitled to bring this cause of action, and is set forth herein to redress the deprivation, under color of statute, ordinance, regulation, policy, custom, practice, and/or usage, of rights, privileges, and/or immunities secured to AMBER TORRES and JESUS FLORES, by the Fourth Amendment to the Constitution of the United States, including, but not limited to, the right to be free from unreasonable governmental seizures of his person.

21. Plaintiffs are informed, believe, and thereon allege that at all times mentioned herein, the Defendant CITY employed the DEFENDANT OFFICERS s. The Defendant CITY and the City of Azusa Police Department provided its individual employees and agents, including the DEFENDANT OFFICERS, with official badges and identification cards which designated and described the bearers as employees of the Defendant CITY and the City of Azusa Police Department.

22. At all times relevant to the acts and omissions herein alleged, the Defendant DOE Officers were employed by the Defendant CITY and the City of Azusa Police Department, and were acting under color of state law and in the course and scope of their employment with the Defendant CITY and the City of Azusa Police Department.

1 23. On October 22, 2021, at approximately 5:00 p.m., at or around 229 S.
2 Azusa Ave., in Azusa, California, AMBER TORRES was in the passenger's seat of
3 a vehicle driven by decedent, JESUS FLORES ("Driver") when City of Azusa
4 Police Department DEFENDANT OFFICERS while acting under color of state law
5 and within the course and scope of their employment with the City of Azusa and the
6 City of Azusa Police Department, negligently assessed the circumstances that were
7 presented to them, and then violently confronted Plaintiff AMBER TORRES and
8 decedent, JESUS FLORES.

9 24. Without warning, the DEFENDANT OFFICERS proceeded to assault
10 and batter Plaintiff AMBER TORRES and decedent, JESUS FLORES, by acts
11 which included, but were not limited to, repeatedly and unjustifiably discharging
12 their department-issued firearms at the vehicle and at the persons of AMBER
13 TORRES and JESUS FLORES, inflicting gunshot wounds, which proved to be
14 fatal. Following the shooting, the involved officers denied medical care to AMBER
15 TORRES and JESUS FLORES in a manner that demonstrated deliberate
16 indifference to their constitutional rights. After a significant and appreciable period
17 of time had passed following the shooting, on November 23, 2021, JESUS
18 FLORES died as a direct and proximate result of the gunshot wounds inflicted upon
19 his person by the DEFENDANT OFFICERS.

20 25. At no time during the course of these events did AMBER TORRES or
21 decedent, JESUS FLORES pose any reasonable or credible threat of death or serious
22 bodily injury to the DEFENDANT OFFICERS, nor did they do anything to justify
23 the force that was used against him, and the same was deadly, excessive,
24 unnecessary, and unlawful. Both prior to and during the time in which Plaintiff
25 AMBER TORRES was severely injured and decedent was fatally shot, AMBER
26 TORRES and JESUS FLORES posed no reasonable or credible threats of death or
27 serious bodily injury to the DEFENDANT OFFICERS, nor to any other individual.
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1 Both prior to and during the time in which AMBER TORRES was injured and
2 JESUS FLORES was shot, they made no aggressive movements, furtive gestures,
3 or physical movements which would suggest to a reasonable police officer that they
4 had the will, or the ability, to inflict substantial bodily harm upon any individual.
5 Both prior to and during the time in which the DEFENDANT OFFICERS shot at the
6 vehicle and JESUS FLORES, DEFENDANT OFFICERS, who fired, were not faced
7 with any circumstances which would have led a reasonable police officer to believe
8 that AMBER TORRES and JESUS FLORES posed an immediate threat of death or
9 serious bodily injury to any person.

10 26. Plaintiffs are informed, believe, and thereupon allege that in injuring
11 AMBER TORRES and shooting JESUS FLORES, as described in the foregoing
12 paragraphs of this Complaint, DEFENDANT OFFICERS acted outside the scope of
13 their jurisdiction and without authorization of law, and acted willfully, maliciously,
14 knowingly, with reckless disregard and callous indifference to the known
15 consequences of their acts and omissions, and purposefully with the intent to
16 deprive AMBER TORRES and JESUS FLORES of their protected rights and
17 privileges, and did in fact violate the aforementioned rights and privileges, thereby
18 warranting punitive and exemplary damages against DEFENDANT OFFICERS in
19 an amount to be proven at the trial of this matter.

20 27. As a direct and proximate result of the wrongful, intentional, and
21 malicious acts and omissions of DEFENDANT OFFICERS, AMBER TORRES and
22 decedent JESUS FLORES sustained significant physical, mental, and emotional
23 injuries on October 22, 2021. they suffered great mental and physical pain,
24 suffering, anguish, fright, nervousness, anxiety, grief, shock, humiliation, indignity,
25 embarrassment, and apprehension prior in a sum to be determined at trial.

26 28. As a further proximate result of the wrongful, intentional, and
27 malicious acts and omissions of DEFENDANT OFFICERS, AMBER TORRES and
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1 decedent JESUS FLORES were required to employ, and did in fact employ,
2 physicians and surgeons to examine, treat, and care for them, and has incurred and
3 continues to incur expenses for emergent and other medical services, treatment, and
4 care in an amount according to proof at trial.

5 29. Plaintiffs are entitled to and hereby demands costs, attorneys' fees, and
6 expenses pursuant to 42 U.S.C. § 1988.

7 **FOR THE SECOND CAUSE OF ACTION**

8 *(By Plaintiff Amber Torres and Yesenia Prena as Successor in*
9 *Interest to JESUS FLORES, Deceased, Against Defendant CITY OF*
10 *AZUSA for Violations of Civil Rights*
11 *[42 U.S.C. § 1983])*

12 *(Based on an Unconstitutional Policy, Practice, or Custom)*

13 30. Plaintiffs restate and incorporate by reference the foregoing paragraphs
14 of this Complaint as if set forth in full at this point.

15 31. This cause of action is brought on behalf of Plaintiff AMBER
16 TORRES, and decedent JESUS FLORES, by and through his Successor in Interest,
17 Plaintiff YESENIA PENIA, who would, but for his death, be entitled to bring this
18 cause of action, and is set forth herein to redress the deprivation, under color of
19 statute, ordinance, regulation, policy, custom, practice, and/or usage, of rights,
20 privileges, and/or immunities secured to JESUS FLORES by the Fourth
21 Amendment to the Constitution of the United States, including, but not limited to,
22 the right to be free from unreasonable governmental seizures of his person.

23 32. Plaintiffs are informed, believe, and thereon allege that at all times
24 mentioned herein, the Defendant CITY employed the DEFENDANT OFFICERS.
25 The Defendant CITY provided its individual employees and agents, including the
26 DEFENDANT OFFICERS, with official badges and identification cards which
27 designated and described the bearers as employees of the Defendant CITY and the
28 City of Azusa Police Department.

1 33. At all times relevant to the acts and omissions herein alleged, the
2 Defendant DOE Officers were employed by the Defendant CITY and the City of
3 Azusa Police Department, and were acting under color of state law and in the course
4 and scope of their employment with the Defendant CITY and the City of Azusa
5 Police Department.

6 34. As set forth in the foregoing paragraphs of this Complaint,
7 DEFENDANT OFFICERS, while acting under color of law and in the course and
8 scope of their employment with the Defendant CITY and the City of Azusa Police
9 Department, violated the Fourth Amendment rights of decedent JESUS FLORES by
10 acts which included, but were not limited to, unreasonably using deadly and
11 excessive force against AMBER TORRES, and decedent, JESUS FLORES . As
12 described in this Complaint, the shooting of JESUS FLORES was an
13 unconstitutional display of an unreasonable seizure, and of the deadly and excessive
14 use of force, which violated the Fourth Amendment right of JESUS FLORES to be
15 free from unreasonable governmental seizures of his person.

16 35. Plaintiffs are informed and believe, and thereupon alleges, that at all
17 times relevant to the acts and omissions alleged in the foregoing paragraphs of this
18 Complaint, DEFENDANT OFFICERS acted pursuant to a longstanding official
19 practice or custom of the Defendant CITY and the City of Azusa Police Department,
20 through which, prior to October 22, 2021, City of Azusa Police Department officers
21 employed unreasonable and excessive force in a manner that violates civilians'
22 Fourth Amendment rights to be free from the unreasonable use of force with such
23 frequency and regularity that, prior to October 22, 2021, City of Azusa Police
24 Department officers' unreasonable uses of force had become a widespread and well
25 settled practice or custom within the City of Azusa Police Department.

26 36. Plaintiff is further informed and believes, and thereupon alleges, that
27 DEFENDANT OFFICERS shooting of decedent JESUS FLORES, who posed no
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1 reasonable or credible threat of violence to DEFENDANT OFFICERS, nor to any
2 other person, demonstrated that DEFENDANT OFFICERS training were inadequate
3 to allow them to handle the usual and recurring situations faced by City of Azusa
4 Police Department officers, as evidenced by the following specific actions and
5 omissions of DEFENDANT OFFICERS in their response to the subject incident:

6 37. The tactical standard of care for law enforcement agencies similarly
7 situated to the City of Azusa Police Department is for law enforcement officers
8 employed by such agencies to utilize additional officers, departmental personnel,
9 and/or departmental resources to assist them when approaching and/or attempting to
10 arrest and/or detain suspects and/or potential arrestees whom the officers believe
11 may possibly pose a threat to the safety of the officers or third parties. Both prior to
12 and during the time in which DEFENDANT OFFICERS shot and killed decedent
13 JESUS FLORES, they acted in flagrant contravention of this well established
14 standard of care.

15 38 DEFENDANT OFFICERS in their response to the subject incident:
16 The tactical standard of care for law enforcement agencies similarly situated to the
17 City of Azusa Police Department is for law enforcement officers employed by such
18 agencies, whenever possible, to issue commands and warnings that are clear and
19 intelligible to suspects and/or potential arrestees prior to employing deadly force.
20 Both prior to and during the time in which DEFENDANT OFFICERS shot and
21 killed decedent JESUS FLORES, they acted in flagrant contravention of this well
22 established standard of care.

23 39. The tactical standard of care for law enforcement agencies similarly
24 situated to the City of Azusa Police Department is for law enforcement officers
25 employed by such agencies to use all available forms of cover and concealment
26 when confronted with the possibility of using deadly force. Both prior to and during
27 the time in which DEFENDANT OFFICERS severely injured AMBER TORRES
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1 shot and killed decedent JESUS FLORES, they acted in flagrant contravention of
2 this well established standard of care.

3 40. The tactical standard of care for law enforcement agencies similarly
4 situated to the City of Azusa Police Department is for law enforcement officers
5 employed by such agencies to keep a safe distance from suspects whom the officers
6 believe may possibly be armed with a weapon so as to obtain the tactical advantage
7 of distance from a potentially armed threat. Both prior to and during the time in
8 which Defendant DOE Officers severely injured AMBER TORRES and shot and
9 killed decedent JESUS FLORES, they acted in flagrant contravention of this well
10 established standard of care.

11 41. The tactical standard of care for law enforcement agencies similarly
12 situated to the City of Azusa Police Department is for law enforcement officers
13 employed by such agencies to use cover, concealment, distance, additional
14 departmental personnel, available illumination, and available communication to
15 accurately assess the level of the threat posed by a suspect and/or potential arrestee
16 prior to using deadly force. Both prior to and during the time in which
17 DEFENDANT OFFICERS severely injured AMBER TORRES and shot and killed
18 decedent JESUS FLORES, they acted in flagrant contravention of this well
19 established standard of care.

20 42. Plaintiffs are informed and believes, and thereupon alleges, that prior
21 to October 22, 2021, DEFENDANT OFFICERS received training and instruction in
22 police tactics and procedures from the City of Azusa Police Department in ways
23 which included, but were not limited to, their attendance at a police academy, their
24 attendance at departmental briefings, their attendance at mandatory and voluntary
25 training seminars, their attendance at roll call at their respective station(s) prior to
26 their assigned shift(s), their receipt of departmental training manuals, their receipt of
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1 departmental training bulletins, and their receipt of additional departmental
2 correspondence and electronic mails.

3 43. Both prior to and on October 22, 2021, encounters with suspects and
4 civilians, such as decedent JESUS FLORES, were common among City of Azusa
5 Police Department officers similarly situated to DEFENDANT OFFICERS, and
6 such encounters were a recurring situation faced by City of Azusa Police
7 Department officers similarly situated to DEFENDANT OFFICERS.

8 44. Plaintiffs are informed and believe, and thereupon alleges, that those
9 individuals responsible for training DEFENDANT OFFICERS, including, but not
10 limited to, their respective field training deputies, watch commanders, shift
11 commanders, training officers, firearms instructors, defensive tactics instructors,
12 sergeants, captains, lieutenants, higher ranking officers, and authorized policy
13 makers and decision makers within the City of Azusa Police Department, the
14 identities of whom are presently unknown to Plaintiffs, knew, or in the exercise of
15 reasonable diligence should have known, that the obvious consequence of the failure
16 to implement, institute, enact, communicate, teach, and/or cause to be taught the
17 above referenced tactical training to police officers similarly situated to
18 DEFENDANT OFFICERS would be that non-dangerous civilians, such as decedent
19 JESUS FLORES, would suffer constitutional deprivations from the unreasonable
20 and excessive use of deadly force.

21 45. Plaintiffs are informed and believe, and thereupon alleges, that
22 notwithstanding the fact that the training personnel responsible for training
23 DEFENDANT OFFICERS, including, but not limited to, their respective field
24 training officers, watch commanders, shift commanders, training officers, firearms
25 instructors, defensive tactics instructors, sergeants, captains, lieutenants, higher
26 ranking deputies, and authorized policy makers and decision makers within the City
27 of Azusa Police Department, the identities of whom are presently unknown to
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1 Plaintiff, knew, or in the exercise of reasonable diligence should have known, that
2 the obvious consequence of the failure to implement, institute, enact, communicate,
3 teach, and/or cause to be taught the above referenced tactical training to police
4 officers similarly situated to DEFENDANT OFFICERS would be that unarmed and
5 non-dangerous civilians, such as AMBER TORRES and decedent JESUS FLORES,
6 would suffer constitutional deprivations from the unreasonable use of deadly force,
7 said training personnel, and each of them, deliberately and consciously failed to
8 provide adequate tactical training in the above enumerated areas.

9 46. Plaintiff is informed and believes, and thereupon alleges, that the
10 failure of the City of Azusa Police Department to provide adequate training to
11 DEFENDANT OFFICERS, as described in the foregoing paragraphs of this
12 Complaint, caused AMBER TORRES and decedent JESUS FLORES to suffer
13 Fourth Amendment violations resulting from the unreasonable and excessive use of
14 deadly force, as previously described in this Complaint.

15 47. As a direct and proximate result of the wrongful, intentional, and
16 malicious acts and omissions of DEFENDANT OFFICERS, AMBER TORRES was
17 severely injured and decedent JESUS FLORES was shot on October 22, 2021, and
18 suffered great mental and physical pain, suffering, anguish, fright, nervousness,
19 anxiety, grief, shock, humiliation, indignity, embarrassment, and apprehension, all
20 to his damage in a sum to be determined at trial.

21 48. As a further proximate result of the wrongful, intentional, and
22 malicious acts and omissions of DEFENDANT OFFICERS, AMBER TORRES
23 decedent JESUS FLORES was required to employ, and did in fact employ,
24 physicians and surgeons to examine, treat, and care for him, and have incurred and
25 continues to incur expenses for emergent and other medical services, treatment, and
26 care in an amount according to proof at trial.

1 49. Plaintiffs are entitled to and hereby demands costs, attorneys' fees, and
2 expenses pursuant to 42 U.S.C. § 1988.

3 **FOR THE THIRD CAUSE OF ACTION**

4 *By Plaintiff YESENIA PENA, Individually,*
5 *against Joseph Stewart and Alejandro Gomez*
6 *[42 U.S.C. §1983]*

7 *(Deprivations of Substantive Due Process)*

8 50. Plaintiff restates and incorporates by reference the foregoing
9 paragraphs of this Complaint as if set forth in full at this point.

10 51. This cause of action is brought by Plaintiff YESENIA PENA, and is set
11 forth herein to redress the deprivation, under color of statute, ordinance, regulation,
12 policy, custom, practice, and/or usage, of rights, privileges, and/or immunities
13 secured to Plaintiff by the Fourteenth Amendment to the Constitution of the United
14 States, including, but not limited to, Plaintiff's right to substantive due process and
15 privacy, Plaintiff's right to associate with her son, decedent JESUS FLORES,
16 Plaintiff's right to enjoy the care, companionship, familial relationship, and society
17 of her son, JESUS FLORES, and Plaintiff's right to be free from arbitrary and
18 unreasonable governmental intrusions into her family unit.

19 52. Plaintiff is informed, believes, and thereon alleges that at all times
20 mentioned herein, the Defendant CITY employed the DEFENDANT OFFICERS.
21 The Defendant CITY provided its individual employees and agents, including the
22 DEFENDANT OFFICERS, with official badges and identification cards which
23 designated and described the bearers as employees of the Defendant CITY and the
24 City of Azusa Police Department.

25 53. At all times relevant to the acts and omissions herein alleged, the
26 DEFENDANT OFFICERS were employed by the Defendant CITY and the City of
27 Azusa Police Department, and were acting under color of state law and in the course
28 and scope of their employment with the Defendant CITY and the City of Azusa
Police Department.

1 54. On October 22, 2021, DEFENDANT OFFICERS, while acting under
2 color of state law and in the course and scope of their employment with the
3 Defendant CITY and the City of Azusa Police Department, contacted JESUS
4 FLORES and proceeded to unjustifiably stop and detain JESUS FLORES without
5 having probable cause or reasonable suspicion to believe that he had committed any
6 crime, or would commit a crime in the future.

7 55. At no time during the course of these events did JESUS FLORES pose
8 any reasonable or credible threat of death or serious bodily injury to the
9 DEFENDANT OFFICERS, nor did he do anything to justify the force that was used
10 against him, and the same was deadly, excessive, unnecessary, and unlawful. Both
11 prior to and during the time in which he was fatally shot, JESUS FLORES posed no
12 reasonable or credible threat of death or serious bodily injury to the DEFENDANT
13 OFFICERS nor to any other individual. Both prior to and during the time in which
14 he was shot dead, JESUS FLORES made no aggressive movements, furtive
15 gestures, or physical movements which would suggest to a reasonable police officer
16 that he had the will, or the ability, to inflict substantial bodily harm upon any
17 individual. Both prior to and during the time in which the DEFENDANT
18 OFFICERS shot and killed JESUS FLORES, the DEFENDANT OFFICERS, who
19 fired, were not faced with any circumstances which would have led a reasonable
20 police officer to believe that JESUS FLORES posed an immediate threat of death or
21 serious bodily injury to any person.

22 56. At all times relevant to the acts and omissions alleged herein, the
23 DEFENDANT OFFICERS were faced with circumstances that allowed time for
24 actual deliberation, and acted with deliberate indifference to the rights and safety of
25 JESUS FLORES and with a conscious disregard of the risks posed to the safety of
26 JESUS FLORES. Additionally, at all times relevant to the acts and omissions
27 alleged herein, the DEFENDANT OFFICERS acted with a purpose to harm
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1 unrelated to any legitimate law enforcement objective when they shot JESUS
2 FLORES. At all times relevant to the acts and omissions alleged herein, the
3 DEFENDANT OFFICERS actions in shooting JESUS FLORES would be
4 considered to "shock the conscience."

5 57. At all times mentioned herein, the DEFENDANT OFFICERS acted
6 under color and pretence of law, and under color of the statutes, ordinances,
7 regulations, policies, practices, customs, and/or usages of the State of California and
8 the Defendant CITY.

9 58. The DEFENDANT OFFICERS deprived the Plaintiff of the rights,
10 privileges, and/or immunities secured to her by the Fourteenth Amendment to the
11 Constitution of the United States and the laws of the United States, including, but
12 not limited to, Plaintiff's right to substantive due process and privacy, Plaintiff's
13 right to associate with her son, JESUS FLORES, Plaintiff's right to enjoy the care,
14 companionship, familial relationship, and society of her son, JESUS FLORES, and
15 Plaintiff's right to be free from unreasonable intrusions into their family unit,
16 secured to them by the Fourteenth Amendment to the Constitution of the United
17 States.

18 59. Plaintiff had a Fourteenth Amendment right to substantive due process
19 and privacy, as well as a Fourteenth Amendment right to associate with her son,
20 JESUS FLORES, a Fourteenth Amendment right to enjoy the care, companionship,
21 familial relationship, and society of her son, JESUS FLORES, and a Fourteenth
22 Amendment right to be free from arbitrary and unreasonable governmental
23 intrusions into her family unit. All of these rights and privileges were secured to
24 Plaintiffs by the provisions of the Fourteenth Amendment to the United States
25 Constitution, and by 42 U.S.C. § 1983. All of these interests were implicated by the
26 wrongful conduct of the Defendant DOE Officers, which proximately caused the
27 death of JESUS FLORES.
28

1 60. Plaintiff is informed, believes, and thereupon alleges, that in
2 unreasonably seizing the person of decedent JESUS FLORES, as described in the
3 foregoing paragraphs of this Complaint, DEFENDANT OFFICERS acted outside
4 the scope of their jurisdiction and without authorization of law, and acted willfully,
5 maliciously, knowingly, with reckless disregard and callous indifference to the
6 known consequences of their acts and omissions, and purposefully with the intent to
7 deprive Plaintiff of her federally protected rights and privileges, and did in fact
8 violate the aforementioned rights and privileges, thereby warranting punitive and
9 exemplary damages against DEFENDANT OFFICERS in an amount to be proven at
10 the trial of this matter.

11 61. As a direct and proximate result of the wrongful, intentional, and
12 malicious acts and omissions of DEFENDANT OFFICERS, Plaintiff suffered great
13 mental and physical pain, suffering, anguish, fright, nervousness, anxiety, grief,
14 shock, humiliation, indignity, embarrassment, and apprehension in a sum to be
15 determined at trial.

16 62. As a further proximate result of the wrongful, intentional, and
17 malicious acts and omissions of DEFENDANT OFFICERS, Plaintiff was required
18 to employ, and did in fact employ, physicians and surgeons to examine, treat, and
19 care for them, and have incurred and continues to incur expenses for emergent and
20 other medical services, treatment, and care in an amount according to proof at trial.

21 63. Plaintiff is entitled to and hereby demands costs, attorneys' fees, and
22 expenses pursuant to 42 U.S.C. § 1988.

23 **FOURTH CAUSE OF ACTION**

24 *By Plaintiff AMBER TORRES, and YESENIA PENIA as Successor in Interest to*
25 *JESUS FLORES Deceased, CITY OF AZUSA and DEFENDANT OFFICERS for*
26 *Violations of Civil Rights*

27 *[Cal. Civil Code § 52.1 - Tom Bane Civil Rights Act]*

28 64. Plaintiffs restate and incorporate by reference the foregoing paragraphs
of this Complaint as if set forth in full at this point.

1 65. All claims asserted herein against the Defendant CITY are presented
2 pursuant to the Defendant CITY's vicarious liability for acts and omissions of
3 municipal employees undertaken in the course and scope of their employment
4 pursuant to California Government Code §§ 815.2(a) and 820(a).

5 66. This cause of action is brought on behalf of decedent JESUS FLORES,
6 by and through his Successor in Interest, Plaintiffs YESENIA PENA, who would,
7 but for his death, be entitled to bring this cause of action, and is set forth herein to
8 redress the deprivation of rights, privileges, and/or immunities secured to JESUS
9 FLORES by the laws of the United States and the United States Constitution, and
10 the laws of the State of California, including California Civil Code § 52.1 and the
11 California Constitution.

12 67. At approximately 5:00 p.m. on October 22, 2021, DEFENDANT
13 OFFICERS, while acting under color of state law and in the course and scope of
14 their employment with the Defendant CITY and the City of Azusa Police
15 Department, contacted AMBER TORRES and decedent, JESUS FLORES, at or
16 around 229 S. Azusa Ave. in Azusa, California, and proceeded to unjustifiably
17 detain AMBER TORRES and JESUS FLORES, without having probable cause or
18 reasonable suspicion to believe that they had committed any crime, or would
19 commit a crime in the future. Without warning, the DEFENDANT OFFICERS
20 proceeded to assault and batter AMBER TORRES and decedent, JESUS FLORES,
21 by acts which included, but were not limited to, repeatedly and unjustifiably
22 discharging their department-issued firearms at the vehicle and at the person of
23 JESUS FLORES, inflicting injuries and gunshot wounds, which proved to be fatal.

24 68. As a direct and proximate result of the above-mentioned conduct of the
25 DEFENDANT OFFICERS, and each of them, AMBER TORRES sustained severe
26 injuries to her body, including her neck, back, and mind, and decedent, JESUS
27 FLORES was shot on October 22, 2021. After surviving for an appreciable period of
28

1 time following the shooting, JESUS FLORES died as a direct and proximate result
2 of the gunshot wounds inflicted upon his person by the DEFENDANT OFFICERS.

3 69. At no time during the course of these events did AMBER TORRES or
4 JESUS FLORES pose any reasonable or credible threat of death or serious bodily
5 injury to the DEFENDANT OFFICERS, nor did they do anything to justify the
6 force that was used against them,, and the same was deadly, excessive, unnecessary,
7 and unlawful. Both prior to and during the time in which they were injured,
8 AMBER TORRES and JESUS FLORES posed no reasonable or credible threat of
9 death or serious bodily injury to the DEFENDANT OFFICERS, nor to any other
10 individual. Both prior to and during the time in which they were injured, they made
11 no aggressive movements, furtive gestures, or physical movements which would
12 suggest to a reasonable police officer that they had the will, or the ability, to inflict
13 substantial bodily harm upon any individual. Both prior to and during the time in
14 which the DEFENDANT OFFICERS injured AMBER TORRES and ultimately
15 killed JESUS FLORES, the DEFENDANT OFFICERS, who fired, were not faced
16 with any circumstances which would have led a reasonable police officer to believe
17 that AMBER TORRES and JESUS FLORES posed an immediate threat of death or
18 serious bodily injury to any person.

19 70. California Civil Code § 52.1 (the Bane Act) prohibits any person from
20 using violent acts or threatening to commit violent acts in retaliation against another
21 person for exercising that person's constitutional rights.

22 71. Plaintiffs are informed, believes, and thereon alleges that the
23 DEFENDANT OFFICERS, while acting under color of state law and in the course
24 and scope of their employment with the Defendant CITY and the City of Azusa
25 Police Department, intentionally committed, and attempted to commit, acts of
26 violence against AMBER TORRES and JESUS FLORES, and/or acted in reckless
27 disregard of AMBER TORRES and JESUS FLORES's civil rights, by repeatedly
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1 discharging their department-issued firearms at the vehicle driven by decedent
2 JESUS FLORES, and his person, without justification or excuse.

3 72. When the DEFENDANT OFFICERS shot AMBER TORRES and
4 JESUS FLORES, they interfered with their civil rights, including their right to be
5 free from unreasonable governmental seizures of their person, their right to due
6 process, their right to equal protection of the laws, their right to be free from state
7 actions that shock the conscience, and their right to life, liberty, and property.

8 73. Plaintiffs are informed, believe, and thereon alleges that the
9 DEFENDANT OFFICERS intentionally and spitefully committed the above
10 described acts to discourage AMBER TORRES and JESUS FLORES from
11 exercising his civil rights, retaliate against AMBER TORRES and JESUS FLORES
12 for invoking their civil rights, and/or prevent AMBER TORRES and JESUS
13 FLORES from exercising their civil rights, and/or acted in reckless disregard of
14 AMBER TORRES and JESUS FLORES civil rights, which he was fully entitled to
15 enjoy.

16 74. Plaintiffs are informed, believe, and thereon allege that AMBER
17 TORRES and JESUS FLORES reasonably believed and understood that the violent
18 acts committed by the DEFENDANT OFFICERS were intended to discourage them
19 from exercising his above described civil rights, retaliate against him for invoking
20 his above described civil rights, and/or prevent them from exercising his above
21 described civil rights.

22 75. Plaintiffs are informed, believe, and thereon allege that the Defendant
23 DOE Officers successfully interfered with the above described civil rights of
24 AMBER TORRES and JESUS FLORES in violation of Cal. Civil Code Section
25 52.1, as described herein.

1 76. The wrongful, intentional, and malicious conduct of the DEFENDANT
2 OFFICERS described herein was a substantial factor in causing AMBER TORRES
3 and JESUS FLORES harms, losses, injuries, and damages.

4 77. Plaintiffs are informed, believe, and thereupon alleges that in
5 intentionally committing and attempted to commits acts of violence against AMBER
6 TORRES and JESUS FLORE, and/or in acting in reckless disregard of AMBER
7 TORRES and JESUS FLORES' civil rights, and thereby interfering with AMBER
8 TORRES and JESUS FLORES civil rights, as described in the foregoing paragraphs
9 of this Complaint, the DEFENDANT OFFICERS acted outside the scope of their
10 jurisdiction and without authorization of law, and acted willfully, maliciously,
11 knowingly, with reckless disregard and callous indifference to the known
12 consequences of their acts and omissions, and purposefully with the intent to
13 deprive them of their protected rights and privileges, and did in fact violate the
14 aforementioned rights and privileges, thereby warranting punitive and exemplary
15 damages against the DEFENDANT OFFICERS in an amount to be proven at the
16 trial of this matter.

17 78. As a direct and proximate result of the wrongful, intentional, and
18 malicious acts and omissions of the DEFENDANT OFFICERS, AMBER TORRES
19 and JESUS FLORES suffered great mental and physical pain, suffering, and
20 anguish, fright, nervousness, anxiety, grief, shock, humiliation, indignity,
21 embarrassment, apprehension, and loss of enjoyment of life, all to their damage in a
22 sum to be determined at trial.

23 79. As a further proximate result of the wrongful, intentional, and
24 malicious acts and omissions of the DEFENDANT OFFICERS, AMBER TORRES
25 and JESUS FLORES were required to employ, and did in fact employ, health care
26 providers and/or medical practitioners to examine, treat, and care for them and
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1 incurred expenses for emergent medical services and medical treatment and care p
2 in an amount according to proof at trial.

3 **FIFTH CAUSE OF ACTION**

4 *Plaintiff YESENIA PENA, Individually,*

5 *Against ALL DEFENDANTS*

6 *For Wrongful Death based on Battery*

7 *[Cal. Gov't. Code §§815.2(a); 820(a); and Cal. Civ. Code §43]*

8 80. Plaintiffs restate and incorporate by reference the foregoing paragraphs
9 of this Complaint as if set forth in full at this point.

10 81. All claims asserted herein against the Defendant CITY are presented
11 pursuant to the CITY's vicarious liability for acts and omissions of municipal
12 employees undertaken in the course and scope of their employment pursuant to
13 California Government Code §§ 815.2(a) and 820(a).

14 82. At approximately 5: 00p.m. on October 22, 2021, Plaintiff's decedent,
15 JESUS FLORES was operating a motor vehicle at or around 229 S. Azusa Ave. in
16 Azusa, California when the heretofore unknown DEFENDANT OFFICERS, while
17 acting under color of state law and in the course and scope of their employment with
18 the Defendant CITY and the City of Azusa Police Department, violently confronted
19 JESUS FLORES and AMBER TORRES.

20 83. Without warning, the DEFENDANT OFFICERS proceeded to assault
21 and batter decedent JESUS FLORES by acts which included, but were not limited
22 to, repeatedly and unjustifiably discharging their department-issued firearms at the
23 vehicle being operated by JESUS FLORES , inflicting several gunshot wounds,
24 which proved to be fatal.

25 84. As a direct and proximate result of the above-mentioned conduct of the
26 DEFENDANT OFFICERS, and each of them, decedent JESUS FLORES was shot
27 on October 22, 2022. After surviving for an appreciable period of time following the
28 shooting, JESUS FLORES died as a direct and proximate result of the gunshot
wounds inflicted upon his person by the DEFENDANT OFFICERS. At no time

1 during the course of these events did JESUS FLORES pose any reasonable or
2 credible threat of violence to the shooting officers, nor did he do anything to justify
3 the force used against him, and the same was deadly, excessive, unnecessary, and
4 unlawful.

5 85. Both prior to and during the time in which he was fatally shot,
6 decedent JESUS FLORES was not armed with any kind of weapon, and posed no
7 reasonable or credible threat of violence to the heretofore unknown DEFENDANT
8 OFFICERS who shot him, nor to any other individual. Both prior to and during the
9 time in which he was shot dead, JESUS FLORES made no aggressive movements,
10 no furtive gestures, and no physical movements which would suggest to a
11 reasonable police officer that he was armed with any kind of weapon, or had the
12 will, or the ability to inflict substantial bodily harm against any individual. Both
13 prior to and during the time in which the DEFENDANT OFFICERS shot and killed
14 JESUS FLORES, the DEFENDANT OFFICERS, who fired, were not faced with
15 any circumstances which would have led a reasonable police officer to believe that
16 JESUS FLORES posed the risk of death or serious bodily injury to any person.

17 86. Plaintiff is informed and believes, and thereupon alleges, that in using
18 deadly force against decedent JESUS FLORES, the DEFENDANT OFFICERS
19 acted contrary to and violated the policies of the City of Azusa Police Department
20 by using deadly force against a suspect in a motor vehicle in a manner proscribed by
21 the policies of the City of Azusa Police Department.

22 87. Plaintiff is informed, believes, and thereupon alleges, that in shooting
23 decedent JESUS FLORES, as described in the foregoing paragraphs of this
24 Complaint, the DEFENDANT OFFICERS acted outside the scope of their
25 jurisdiction and without authorization of law, and acted willfully, maliciously,
26 knowingly, with reckless disregard and callous indifference to the known
27 consequences of their acts and omissions, and purposefully with the intent to
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1 deprive JESUS FLORES of his protected rights and privileges, and did in fact
2 violate the aforementioned rights and privileges, thereby warranting punitive and
3 exemplary damages against the DEFENDANT OFFICERS in an amount to be
4 proven at the trial of this matter.

5 88. As a direct and proximate result of the above-described conduct of the
6 Defendants, and each of them, and the ensuing death of decedent JESUS FLORES,
7 JESUS FLORES's heir, the Plaintiff herein, has sustained substantial economic and
8 non-economic damages resulting from the loss of the love, companionship, comfort,
9 care, assistance, protection, affection, society, moral support, training, guidance,
10 services, earnings, and support of JESUS FLORES in an amount according to proof
11 at trial.

12 89. As a further proximate result of the above-described conduct of the
13 Defendants, and each of them, and the ensuing death of decedent JESUS FLORES,
14 Plaintiff has incurred funeral and burial expenses in an amount according to proof at
15 trial.

16 **SIXTH CAUSE OF ACTION**
17 **By Plaintiff YESENIA PENA, Individually**
18 **Against ALL DEFENDANTS for Wrongful Death**
19 **[Cal. Gov't. Code §§815.2(a); 820(a)]**
20 **(Based on Negligence)**

21 90. Plaintiffs restate and incorporate by reference the foregoing paragraphs
22 of this Complaint as if set forth in full at this point.

23 91. All claims asserted herein against the Defendant CITY are presented
24 pursuant to the Defendant CITY's vicarious liability for acts and omissions of
25 municipal employees undertaken in the course and scope of their employment
26 pursuant to California Government Code §§ 815.2(a) and 820(a).

27 92. At approximately 5:00 p.m. on October 22, 2021, Plaintiff's decedent,
28 JESUS FLORES, was operating a motor vehicle at or around 229 S. Azusa Ave. in
Azusa, California, when the heretofore unknown DEFENDANT OFFICERS, while

1 acting under color of state law and in the course and scope of their employment with
2 the Defendant CITY and the City of Azusa Police Department, negligently assessed
3 the circumstances presented to them, and then violently confronted JESUS
4 FLORES.

5 93. Without warning, the DEFENDANT OFFICERS proceeded to
6 negligently discharge their department-issued firearms at the person of decedent
7 JESUS FLORES, inflicting several gunshot wounds, which proved to be fatal. After
8 surviving for an appreciable period of time following the shooting, JESUS FLORES
9 died as a direct and proximate result of the gunshot wounds negligently inflicted
10 upon his person by the DEFENDANT OFFICERS. At no time during the course of
11 these events did JESUS FLORES pose any reasonable or credible threat of violence
12 to the shooting officers, nor did he do anything to justify the force used against him,
13 and the same was deadly, excessive, unnecessary, and unlawful.

14 94. Both prior to and during the time in which he was fatally shot,
15 decedent JESUS FLORES was not armed with any kind of weapon, and posed no
16 reasonable or credible threat of violence to the heretofore DEFENDANT
17 OFFICERS who shot him, nor to any other individual. Both prior to and during the
18 time in which he was shot dead, JESUS FLORES made no aggressive movements,
19 no furtive gestures, and no physical movements which would suggest to a
20 reasonable police officer that he was armed with any kind of weapon, or had the
21 will, or the ability to inflict substantial bodily harm against any individual. Both
22 prior to and during the time in which the DEFENDANT OFFICERS shot and killed
23 JESUS FLORES, the DEFENDANT OFFICERS s, who fired, were not faced with
24 any circumstances which would have led a reasonable police officer to believe that
25 JESUS FLORES posed the risk of death or serious bodily injury to any person.

26 95. Plaintiffs are informed and believe, and thereupon allege, that in using
27 deadly force against decedent JESUS FLORES, the DEFENDANT OFFICERS
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1 acted contrary to and violated the policies of the City of Azusa Police Department
2 by using deadly force against a suspect in a motor vehicle in a manner proscribed by
3 the policies of the City of Azusa Police Department.

4 96. Plaintiffs are informed and believe, and thereupon allege, that on and
5 before October 22, 2021, the DEFENDANT OFFICERS had a duty to exercise the
6 reasonable and ordinary care which would be expected of similarly situated peace
7 officers in the use of deadly force, and had a duty to exercise the reasonable and
8 ordinary care which would be expected of similarly situated peace officers in the
9 execution of police tactics and police procedures in approaching and/or attempting
10 to detain civilians and suspects who do not pose a risk of death or serious bodily
11 injury to any person. Notwithstanding each of these duties, the Defendant DOE
12 Officers failed to exercise reasonable and ordinary care in committing the acts
13 alleged herein, by actions and inactions which include, but are not limited to,
14 negligently failing to utilize additional departmental resources during the detention
15 of decedent JESUS FLORES, negligently failing to utilize available forms of cover
16 and concealment during the detention arrest of JESUS FLORES, negligently failing
17 to maintain a position of tactical advantage during the detention of JESUS FLORES,
18 negligently failing to communicate and/or effectively
19 communicate with one another and with other departmental personnel and resources
20 during the detention of JESUS FLORES, negligently failing to utilize less lethal
21 force options and other alternatives less intrusive than deadly force during the
22 detention of JESUS FLORES, negligently failing to deescalate the situation
23 involving JESUS FLORES, negligently employing a tactical response to the
24 situation involving JESUS FLORES that resulted in the unnecessary and
25 preventable shooting of JESUS FLORES, negligently employing deadly force
26 against an individual in contravention of the policies of the City of Azusa Police
27 Department, negligently failing to determine the fact that JESUS FLORES posed no
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1 immediate threat of death or serious bodily injury to any person when he was shot
2 and killed, negligently inflicting physical injury upon JESUS FLORES, as described
3 herein, and negligently employing deadly force against JESUS FLORES when the
4 same was unnecessary and unlawful. All of these negligent acts proximately caused
5 JESUS FLORES's death on November 23, 2021.

6 97. As a proximate result of the above-described conduct of the
7 Defendants, and each of them, JESUS FLORES was shot, and ultimately died from
8 the gunshot wounds November 23, 2021.

9 98. As a direct and proximate result of the death of decedent JESUS
10 FLORES and the above-described conduct of the Defendants, and each of them,
11 JESUS FLORES's heir, the Plaintiff herein, have sustained substantial economic
12 and non-economic damages resulting from the loss of the love, companionship,
13 comfort, care, assistance, protection, affection, society, moral support, training,
14 guidance, services, earnings, and support of JESUS FLORES in an amount
15 according to proof at trial.

16 99. As a further proximate result of the above-described conduct of the
17 Defendants, and each of them, and the ensuing death of decedent JESUS FLORES,
18 Plaintiff has incurred funeral and burial expenses in an amount according to proof at
19 trial.

20 **SEVENTH CAUSE OF ACTION**

21 *By Plaintiff AMBER TORRES, Individually*
22 *Against ALL DEFENDANTS for Battery*
23 *[Cal. Gov't. Code §§815.2(a); 820(a)]*

24 100. Plaintiff restates and incorporates by reference the foregoing
25 paragraphs of this Complaint as set forth in full at this point.

26 101. All claims asserted herein against the Defendant CITY are presented
27 pursuant to the CITY's vicarious liability for acts and omissions of municipal
28 employees undertaken in the course and scope of their employment pursuant to
California Government Code §§ 815.2(a) and 820(a).

1 102. Plaintiff is informed, believes, and thereupon alleges, that in shooting at
2 the vehicle, as described in the foregoing paragraphs of this Complaint, the
3 DEFENDANT OFFICERS acted outside the scope of their jurisdiction and without
4 authorization of law, and acted willfully, maliciously, knowingly, with reckless
5 disregard and callous indifference to the known consequences of their acts and
6 omissions, and purposefully with the intent to deprive AMBER TORRES of her
7 protected rights and privileges, and did in fact violate the aforementioned rights and
8 privileges, thereby warranting punitive and exemplary damages against the
9 DEFENDANT OFFICERS in an amount to be proven at the trial of this matter.

10 103. As a direct and proximate result of the above-described conduct of the
11 Defendants, and each of them, and the ensuing severe injuries to AMBER TORRES,
12 she was place in great fear for her life and physical well being, and has suffered and
13 continues to suffer extreme and severe mental anguish, as well as great mental and
14 physical pain and injury, all to her damage in a sum to be determined at trial.

15 104. As a further proximate result of the wrongful, intentional, and
16 malicious acts and omissions of DEFENDANT OFFICERS, Plaintiff AMBER
17 TORRES has been required to employ, and did in fact employ, physicians to
18 examine, treat and care for her, and has incurred and continues to incur expenses for
19 emergent and other medical services, treatment, and care in an amount according to
20 proof at trial.

21 **EIGHTH CAUSE OF ACTION**
22 **By Plaintiff AMBER TORRES, Individually**
23 **Against ALL DEFENDANTS vor Negligence**
24 **[Cal. Gov't. Code §§815.2(a); 820(a)]**

25 105. Plaintiff restates and incorporates by reference the foregoing
26 paragraphs of this Complaint as set forth in full at this point.

27 106. All claims asserted herein against the Defendant CITY are presented
28 pursuant to the CITY's vicarious liability for acts and omissions of municipal

1 employees undertaken in the course and scope of their employment pursuant to
2 California Government Code §§ 815.2(a) and 820(a).

3 107. As a direct and proximate result of the above-described conduct of the
4 Defendants, and each of them, and the ensuing severe injuries to AMBER TORRES,
5 she was place in great fear for her life and physical well being, and has suffered and
6 continues to suffer extreme and severe mental anguish, as well as great mental and
7 physical pain and injury, all to her damage in a sum to be determined at trial.

8 108. As a further proximate result of the wrongful, intentional, and
9 malicious acts and omissions of DEFENDANT OFFICERS, Plaintiff AMBER
10 TORRES has been required to employ, and did in fact employ, physicians to
11 examine, treat and care for her, and has incurred and continues to incur expenses for
12 emergent and other medical services, treatment, and care in an amount according to
13 proof at trial.

14 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

- 15 1. For funeral and burial related expenses according to proof at trial;
- 16 2. For medical and related expenses according to proof at trial;
- 17 3. For general and exemplary damages in an amount according to proof at
18 trial;
- 19 4. For costs of suit incurred herein; and
- 20 5. For such other and further relief as the Court deems just and proper.
- 21 6. For attorneys; fees incurred herein, as provided by law;
- 22 7. For punitive damages against the individual Defendants in their
23 individual capacities in an amount according to proof at trial; and
- 24 8. For such other and further relief as the Court deems just and proper.

25 **JURY DEMAND**

26 Plaintiffs hereby demand that a jury be impaneled for the trial of this matter.
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28

1
2 DATED: February 10, 2023

3 Respectfully submitted,

4 **THE COCHRAN FIRM CALIFORNIA**

5
6 By: /s/Brian T. Dunn

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8 Brian T. Dunn
9 *Attorneys for Plaintiffs*
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DECLARATION OF YESENIA PENA

1
2 1. The decedent's name who is the subject of this action for violations of
3 civil rights is JESUS FLORES ("MR. FLORES"), who passed away on November
4 23, 2021.

5 2. On October 22, 2021, MR. FLORES was shot in an officer involved
6 shooting incident that occurred at or around 229 S. Azusa Ave. in Azusa, and State of
7 California.

8 3. No proceeding is now pending in California for the administration of
9 decedent's estate.

10 4. I am the decedent's successors in interest (as defined in Section 377.11
11 of the California Code of Civil Procedure), with respect to the decedent's interest in
12 the within action.

13 5. No other person has a superior right to commence the action or
14 proceeding or to be substituted for the decedent in the pending action.

15 I declare under penalty of perjury under the laws of the State of
16 California that the foregoing is true and correct. Executed on February 10, 2022 at
17 Los Angeles, California.

18
19 /s/ Yesenia Pena

20 _____
21 YESENIA PENA , Declarant
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COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC HEALTH

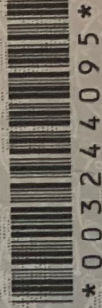


3052021310515

CERTIFICATE OF DEATH

1. NAME OF DECEDENT - FIRST (Given) JESUS		2. STATE FILE NUMBER 3052021310515		3. LOCAL REGISTRATION NUMBER 3202119072054	
4. AKA, ALSO KNOWN AS - Include full AKA (first, middle, last) None		5. MIDDLE FLORES		6. LAST (Family) FLORES	
7. BIRTH STATE/FOREIGN COUNTRY CA		8. DATE OF BIRTH mm/dd/yyyy 06/20/1996		9. AGE Yrs 25	
10. SOCIAL SECURITY NUMBER UNK		11. EVER IN U.S. ARMED FORCES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		12. MARITAL STATUS/TYPE (at Time of Death) NEVER MARRIED	
13. EDUCATION - Highest Level (degrees) UNKNOWN		14. WAS DECEDENT HISPANIC/LATINO/SPANISH? (if yes, see worksheet on back) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		15. DECEDENT'S RACE - Up to 3 races may be listed (see worksheet on back) MEXICAN AMERICAN	
16. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED SECURITY GUARD		17. KIND OF BUSINESS OR INDUSTRY (if a grocery store, meat construction, employment agency, etc.) SELF EMPLOYED		18. YEARS IN OCCUPATION 1	
19. DECEDENT'S RESIDENCE (Street and number, or location) 431 N. HICKS AVENUE		20. CITY LOS ANGELES		21. COUNTY/PROVINCE LOS ANGELES	
22. ZIP CODE 90063		23. YEARS IN COUNTRY 25		24. STATE/FOREIGN COUNTRY CA	
25. INFORMANT'S NAME, RELATIONSHIP JOHANNA PENA, SISTER		26. ADDRESS (Street and number, or location) 431 N. HICKS AVENUE, LOS ANGELES, CA 90063		27. INFORMANT'S SIGNATURE AND ADDRESS (Street and number, or location) JOHANNA PENA, SISTER 431 N. HICKS AVENUE, LOS ANGELES, CA 90063	
28. NAME OF SURVIVING SPOUSE-SPOUSE-PRST None		29. MIDDLE None		30. LAST (BIRTH NAME) None	
31. NAME OF FATHER/PARENT-FIRST ALFREDO		32. MIDDLE None		33. LAST FLORES RAMIREZ	
34. NAME OF MOTHER/PARENT-FIRST YESENIA		35. MIDDLE None		36. LAST (BIRTH NAME) PENA	
37. DATE OF DEATH mm/dd/yyyy 12/17/2021		38. PLACE OF FINAL DISPOSITION LIVE OAK MEMORIAL PARK 200 E. DUARTE RD, MONROVIA, CA 91016		39. BIRTH STATE MEX. MX	
40. TYPE OF DISPOSITIONS CREMATE/BURIAL		41. SIGNATURE OF FUNERAL HOME GUADALUPE M GARCIA		42. LICENSE NUMBER EMB9694	
43. NAME OF FUNERAL ESTABLISHMENT UNERARIA DEL ANGEL LINCOLN HEIGHTS		44. LICENSE NUMBER FD71		45. SIGNATURE OF LOCAL REGISTRAR MUNTU DAVIS MD	
46. PLACE OF DEATH POMONA VALLEY HOSPITAL MEDICAL CENTER		47. IF HOSPITAL, SPECIFY ONE <input checked="" type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient <input type="checkbox"/> Home <input type="checkbox"/> Hospice		48. DATE mm/dd/yyyy 12/17/2021	
49. COUNTY LOS ANGELES		50. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location) 1798 N. GAREY AVE		51. CITY POMONA	
52. CAUSE OF DEATH (A) GUNSHOT WOUND OF THE HEAD		53. IMMEDIATE CAUSE (A) GUNSHOT WOUND OF THE HEAD		54. DEATH REPORTED TO CORONER? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
55. UNDERLYING CAUSE (B) GUNSHOT WOUND OF THE HEAD		56. OTHER THAN HOSPITAL, SPECIFY ONE <input type="checkbox"/> Nursing Home <input type="checkbox"/> Hospice <input type="checkbox"/> Home <input type="checkbox"/> Other		57. DATE mm/dd/yyyy 2021-12-19	
58. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107 NONE		59. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 112? (If yes, list type of operation and date) NO		60. IF FEMALE, PRECISE IN LAST YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK	
61. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED Decedent Attended Since		62. SIGNATURE AND TITLE OF CERTIFIER REGINA AUGUSTINE, DEP CORONER		63. LICENSE NUMBER 1650	
64. MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Accident <input checked="" type="checkbox"/> Homicide <input type="checkbox"/> Suicide		65. TYPE ATTESTING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE None		66. INJURY DATE mm/dd/yyyy 10/22/2021	
67. I CERTIFY THAT MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED OTHER: ROADWAY		68. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.) ROADWAY		69. INJURY DATE mm/dd/yyyy 10/22/2021	
70. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury) SHOT BY LAW ENFORCEMENT (OFFICER INVOLVED SHOOTING)		71. LOCATION OF INJURY (Street and number, or location, and city, and zip) 229 S. AZUSA AVE, AZUSA, CA 91702		72. INJURY DATE mm/dd/yyyy 10/22/2021	
73. SIGNATURE OF CORONER / DEPUTY CORONER REGINA AUGUSTINE		74. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER REGINA AUGUSTINE, DEP CORONER		75. INJURY DATE mm/dd/yyyy 10/22/2021	
76. STATE REGISTRAR None		77. FAX/AUTH # None		78. CENSUS TRACT None	

CERTIFIED COPY OF VITAL RECORD
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
This is a true certified copy of the record filed in the County of Los Angeles
Department of Public Health on **Jan 5 2022** at **12:21 PM**



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JAN - 5 2022

DATE ISSUED

Health Officer and Registrar

This copy not valid unless prepared on engraved border displaying seal and signature of Registrar.

